

ORDINANCE NO. 03-16

AN ORDINANCE OF THE CITY OF AVON PARK, AMENDING CHAPTER 54, LAW ENFORCEMENT, ARTICLE II, POLICE DEPARTMENT, DIVISION 2, RETIREMENT SYSTEM, OF THE CODE OF ORDINANCES OF THE CITY OF AVON PARK; AMENDING SECTION 54-51, DEFINITIONS; AMENDING SECTION 54-55, CONTRIBUTIONS; AMENDING SECTION 54-56, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-57, PRE-RETIREMENT DEATH; AMENDING SECTION 54-58, DISABILITY; AMENDING SECTION 54-60, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-65, MAXIMUM PENSION; AMENDING SECTION 54-66, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 54-74, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS; ELIMINATION OF MANDATORY DISTRIBUTIONS; AMENDING SECTION 54-77, PRIOR POLICE SERVICE; AMENDING SECTION 54-78, DEFERRED RETIREMENT OPTION PLAN; ADDING SECTION 54-80, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 185 SHARE ACCOUNTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA, THAT;

SECTION 1: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-51, Definitions, to amend the definitions of *Actuarial Equivalent*, *Credited Service* and *Spouse*, to read as follows:

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Actuarial equivalent means a benefit or amount of equal value, based upon the ~~1983~~ Group Annuity RP 2000 Combined Healthy Mortality Table Unisex, with disabled lives set forward five (5) years and an interest rate of eight percent per annum. This definition may only be amended by the city pursuant to the recommendation of the board using the assumptions adopted by the board with the advice of the plan=s actuary, such that actuarial assumptions are not subject to city discretion.

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Credited service means the total number of years and fractional parts of years of service as a police officer with member contributions, when required, omitting intervening years or fractional parts of years when such member was not employed by the city as a police officer. A member may voluntarily leave his accumulated contributions in the fund for a period of five years after leaving the employ of the police department pending the possibility of being reemployed as a police officer, without losing credit for the time that he was a member of the system. If a vested member leaves the employ of the police department, his accumulated contributions will be returned only upon his written request. If a member who is not vested is not reemployed as a police officer with the police department within five years, his accumulated contributions, if \$1,000.00 or less, shall be returned. If a member who is not vested is not reemployed within five years, his accumulated contributions, if more than \$1,000.00, will be returned only upon the written request of the member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the board. Upon return of a member's accumulated contributions, all of his rights and benefits under the system are forfeited and terminated. Upon any reemployment, a police officer shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his accumulated contributions from the fund, unless the police officer repays into the fund the contributions he has withdrawn, with interest, as determined by the board, within 90 days after his reemployment.

The years or fractional parts of years that a member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a police officer with the city to perform training or service, shall be added to his years of credited service for all purposes, including vesting, provided that:

- (1) The member is entitled to reemployment under the provisions of USERRA.
- (2) The member returns to his employment as a police officer within one year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.

- (3) The maximum credit for military service pursuant to this subsection shall be five years.
- (4) This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by section 414(u)(12) of the code, an individual receiving differential wage payments (as defined under section 3401(h)(2) of the code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of credited service either during each plan year of a member's employment with the City or in the plan year in which the member terminates employment.

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Spouse means the ~~lawful wife or husband of a member or retiree~~ member's or retiree's spouse under applicable law at the time benefits become payable.

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SECTION 2: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-55, Contributions, subsection (c), City Contributions, to read as follows:

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(c) *City contributions.* So long as this system is in effect, the city shall make quarterly contributions to the fund in an amount equal to ~~the difference in each year, between the total aggregate member contributions for the year, plus state contributions for such year, and the total cost for the year~~ the required City contribution, as shown by the most recent applicable actuarial valuation of the system, but in no event shall the city's annual contribution be less than five percent of the total salary of the members. ~~The total cost for any year shall be defined as the total normal cost plus the additional amount sufficient to amortize the unfunded past service liability as provided in F.S. ch. 112, pt. VII.~~

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SECTION 3: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-56, Benefit Amounts and Eligibility, subsection (a), Normal Retirement Date, and subsection (b), Normal Retirement Benefit, to read as follows:

* * * * *

(a) *Normal retirement age and date.* ~~For members hired before the effective date of the ordinance adopting this provision, a member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age 55 and the completion of ten years of credited service or age 60, regardless of years of credited service or the completion of 20 years of credited service, regardless of age. For members hired on or after the effective date of the ordinance adopting this provision, a member's normal retirement date shall be the first day of the month coincident with, or next following the earlier of the attainment of age 55 and the completion of ten years of credited service or age 60, regardless of years of credited service or the completion of 25 years of credited service, regardless of age. A member may retire on his normal retirement date or on the first day of any month thereafter, and each member shall become 100 percent vested in his accrued benefit on the member's normal retirement date. Normal retirement under the system is retirement from employment with the city on or after the normal retirement date.~~ For member hired before April 28, 2014, a member's normal retirement age is the earlier of the attainment of age 55 and the completion of ten years of

credited service, or age 60, regardless of years of credited service or the completion of 20 years of credited service, regardless of age. For members hired on or after April 28, 2014, a member's normal retirement age is the earlier of the attainment of age 55 and the completion of ten years of credited service, or age 60, regardless of years of credited service, or the completion of 25 years of credited service, regardless of age. Each member shall become one hundred percent (100%) vested in his accrued benefit at normal retirement age. A member's normal retirement date shall be the first day of the month coincident with or next following the date the member retires from the City after attaining normal retirement age.

(b) *Normal retirement benefit.* A member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his retirement and be continued thereafter during member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. For members hired before ~~the effective date of the ordinance adopting this provision~~ April 28, 2014, the monthly retirement benefit shall equal three percent of average final compensation, for each year of credited service. For members hired on or after ~~the effective date of the ordinance adopting this provision~~ April 28, 2014, the monthly retirement benefit shall equal two percent of average final compensation, for each year of credited service.

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SECTION 4: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-57, Pre-Retirement Death, subsection (b)(2), to read as follows:

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(2) *Non-service-connected.* The benefit payable to the spouse and/or children of a member who dies as a direct result of an occurrence which is not service related shall be the same as those benefits specified in subsection ~~(a)(1)~~ (b)(1) above, provided that such member has completed at least five years of credited service at the date of death.

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SECTION 5: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-58, Disability, subsection (a), Disability Benefits In-Line of Duty, and subsection (c), Disability Benefits Not-in-Line of Duty, to read as follows:

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(a) *Disability benefits in-line-of duty.* Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability was directly caused by the performance of his duty as a police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service if the member was hired before ~~the effective date of the ordinance adopting this provision~~ April 28, 2014, and two percent of his average final compensation multiplied by the total years of credited service if the member was hired on or after ~~the effective date of the ordinance adopting this provision~~ April 28, 2014, but in any event the minimum amount paid to the member shall be 42 percent of the average final compensation of the member. Terminated persons, either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

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(c) *Disability benefits not in-line-of duty.* Any member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a police officer, which disability is not directly caused by the

performance of his duties as a police officer shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three percent of his average final compensation multiplied by the total years of credited service if the member was hired before ~~the effective date of the ordinance adopting this provision~~ April 28, 2014, and two percent of his average final compensation multiplied by the total years of credited service if the member was hired on or after ~~the effective date of the ordinance adopting this provision~~ April 28, 2014, but in any event the minimum amount paid to the member shall be 25 percent of the average final compensation of the member. Terminated persons, either vested or nonvested, are not eligible for disability benefits. Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

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SECTION 6: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-60, Optional Forms of Benefits, subsection (b), to read as follows:

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(b) The member, upon electing any option of this section, will designate the joint pensioner, subsection (a)(2) above, or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous

sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

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SECTION 7: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-65, Maximum Pension, subsections (e)(2), (f), (h) and (l)(2), and adding subsection (m), to read as follows:

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(e)(2) In the event the member's benefit is based on at least fifteen (15) years of credited service as a full-time employee of the police or fire department of the City, the adjustments provided for in (e)(1) above shall not apply.

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(f) *Less than Ten (10) Years of Participation ~~or Service~~.* The maximum retirement benefits payable under this section to any member who has completed less than ten (10) years of ~~credited service with the City~~ participation shall be the amount determined under subsection (a) of this section multiplied by a fraction, the numerator of which is the number of the member's years of ~~credited service~~ participation and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to Sec. 54-58, or pre-retirement death benefits paid pursuant to Sec. 54-57.

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(h) *Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.* Notwithstanding anything in this section 54-65, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection (h) of section 54-65 if the benefits payable, with respect to such member under this system and under all other qualified

defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year ~~and~~ or for any prior limitation year, and the City has not at any time maintained a qualified defined contribution plan in which the member participated; provided, however, that if the member has completed less than ten (10) years of credited service with the City, the limit under this subsection (h) of section 54-65 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten (10).

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(1)(2) No member of the system shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter ~~67~~ 1223, Title 10, U.S. Code.

(m) Effect of Direct Rollover on 415(b) Limit. If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

SECTION 8: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-66, Minimum Distribution of Benefits, subsection (b)(2)d., to read as follows:

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- d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, this subsection (b)(2), other than subsection (b)(2)a, will apply as if the surviving spouse were the member.

For purposes of this subsection (b)(2) ~~and subsection (e)~~, distributions are considered to begin on the member's required beginning date or, if subsection (b)(2)d applies, the date of distributions are required to begin to the surviving spouse under subsection (b)(2)a. If annuity payments irrevocably commence to the member before the member's required beginning date (or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)a the date distributions are considered to begin is the date distributions actually commence.

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SECTION 9: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-74, Direct Transfers of Eligible Rollover Distributions; Elimination of Mandatory Distributions; subsection (b)(3), to become subsection (c), to read as follows:

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(3 c) *Elimination of mandatory distributions.* Notwithstanding any other provision herein to the contrary, in the event this plan provides for a mandatory (involuntary) cash distribution from the plan not otherwise required by law, for an amount in excess of \$1,000.00, such distribution shall be made from the plan only upon written request of the member and completion by the member of a written election on forms designated by the board, to either receive a cash lump sum or to rollover the lump sum amount.

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SECTION 10: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-77, Prior Police Service, subsection (e), to read as follows:

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(e) In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal or state law enforcement department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in section ~~54-65(h)(2)~~ 54-65(1)(2).

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SECTION 11: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by amending Section 54-78, Deferred Retirement Option Plan, to read as follows:

Sec. 54-78. Deferred retirement option plan.

(a) *Definitions.* As used in this section 54-78, the following definitions apply:

(1) *DROP* means the City of Avon Park Police Officers' Deferred Retirement Option Plan.

(2) *DROP account* means the account established for each DROP participant under subsection (c).

(3) "Total return of the assets" -- For purposes of calculating earnings on a member's DROP account pursuant to subsection (c)(2)b.2., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.

(b) *Participation.*

(1) *Eligibility to participate.* In lieu of terminating his employment as a police officer, any member who is eligible for normal retirement under the system may

elect to defer receipt of such service retirement pension and to participate in the DROP.

- (2) *Election to participate.* A member's election to participate in the DROP must be made in writing in a time and manner determined by the board and shall be effective on the first day of the first calendar month which is at least 15 business days after it is received by the board.
- (3) *Period of participation.* A member who elects to participate in the DROP under subsection (b)(2) of this section, shall participate in the DROP for a period not to exceed 60 months beginning at the time his election to participate in the DROP first becomes effective. A member may participate only once.
- (4) *Termination of participation.*
 - a. A member's participation in the DROP shall cease at the earlier of:
 1. The end of his permissible period of participation in the DROP as determined under subsection (b)(3) of this section; or
 2. Termination of his employment as a police officer.
 - b. Upon the member's termination of participation in the DROP, pursuant to subsection a.1. above, all amounts provided for in subsection (c)(2), including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the system to his DROP account. Any amounts remaining in his DROP account shall be paid to him in accordance with the provisions of subsection (d).
 - c. A member who terminates his participation in the DROP under this subsection (b)(4) shall not be permitted to again become a participant in the DROP.
- (5) *Effect of DROP participation on the system.*
 - a. A member's credited service and his accrued benefit under the system shall be determined on the date his election to participate in the DROP

first becomes effective. For purposes of determining the accrued benefit, the member's salary for the purposes of calculating his average final compensation shall include an amount equal to any lump sum payments which would have been paid to the member and included as salary as defined herein, had the member retired under normal retirement and not elected DROP participation. Member contributions attributable to any lump sums used in the benefit calculation and not actually received by the member shall be deducted from the first payments to the member's DROP account. The member shall not accrue any additional credited service or any additional benefits under the system (except for any supplemental benefit payable to DROP participants or any additional benefits provided under any cost-of-living adjustment for retirees in the system) while he is a participant in the DROP. After a member commences participation, he shall not be permitted to again contribute to the system nor shall he be eligible for disability or pre-retirement death benefits except as provided for in section 54-79, Reemployment after retirement.

- b. No amounts shall be paid to a member from the system while the member is a participant in the DROP. Unless otherwise specified in the system, if a member's participation in the DROP is terminated other than by terminating his employment as a police officer, no amounts shall be paid to him from the system until he terminates his employment as a police officer. Unless otherwise specified in the system, amounts transferred from the system to the member's DROP account shall be paid directly to the member only on the termination of his employment as a police officer.

(c) *Funding.*

- (1) *Establishment of DROP account.* A DROP account shall be established for each member participating in the DROP. A member's DROP account shall consist of

amounts transferred to the DROP under subsection (c)(2), and earnings or interest on those amounts.

(2) *Transfers from retirement system.*

a. As of the first day of each month of a member's period of participation in the DROP, the monthly retirement benefit he would have received under the system had he terminated his employment as a police officer and elected to receive monthly benefit payments thereunder shall be transferred to his DROP account, except as otherwise provided for in subsection (b)(4)b. A member's period of participation in the DROP shall be determined in accordance with the provisions of subsections (b)(3) and (4), but in no event shall it continue past the date he terminates his employment as a police officer.

b. Except as otherwise provided in subsection (b)(4)b., a member's DROP account under this subsection (c)(2) shall be debited or credited ~~after each fiscal year quarter~~ with either:

1. Interest at an effective rate of 6 1/2 percent per annum compounded monthly determined on the last business day of the prior month's ending balance and credited to the member's DROP Account as of such date (to be applicable to all current and future DROP participants); or

2. Earnings, to be credited or debited to the member's DROP Account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows:

The average daily balance in a member's DROP account shall be credited or debited at a rate equal to the net investment return realized by the system for that quarter. "Net investment

return" for the purpose of this subsection is the total return of the assets in which the member's DROP account is invested by the board net of brokerage commissions, transaction costs and management fees.

For purposes of calculating earnings on a member's DROP account pursuant to this subsection (c)(2)b.2., brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the Board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total Plan assets.

Upon electing participation in the DROP, the member shall elect to receive either interest or earnings on his account to be determined as provided above. The member may, in writing, elect to change his election only once during his DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter.

- c. A member's DROP account shall only be credited or debited with earnings or interest and monthly benefits while the member is a participant in the DROP. A member's final DROP account value for distribution to the member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return, plus any monthly periodic

additions made to the DROP account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a member is employed by the city police department after participating in the DROP for the permissible period of DROP participation, then beginning with the member's first month of employment following the last month of the permissible period of DROP participation, the member's DROP account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such nontransferred amounts shall be forfeited and continue to be forfeited while the member is employed by the city police department. A member employed by the city police department after the permissible period of DROP participation will be eligible for preretirement death or disability benefits, and will accrue additional credited service only as provided for in section 54-79.

(d) *Distribution of DROP accounts on termination of employment.*

(1) *Eligibility for benefits.* A member shall receive the balance in his DROP account in accordance with the provisions of this subsection (d) upon his termination of employment as a police officer. Except as provided in subsection (d)(5), no amounts shall be paid to a member from the DROP prior to his termination of employment as a police officer.

(2) *Form of distribution.*

a. Unless the member elects otherwise, distribution of his DROP account shall be made in a cash lump sum, subject to the direct rollover provisions set forth in subsection (d)(6). ~~A member may, however, elect, in such time and manner as the board shall prescribe, that his DROP distribution be used to purchase a nonforfeitable fixed annuity payable in such form as~~

~~the member may elect.~~ Elections under this subsection shall be in writing and shall be made in such time or manner as the board shall determine.

- b. If a member dies before his benefit is paid, his DROP account shall be paid to his beneficiary in such optional form as his beneficiary may select. If no beneficiary designation is made, the DROP account shall be distributed to the member's estate.

(3) *Date of payment of distribution.* Except as otherwise provided in this subsection (d), distribution of a member's DROP account shall be made as soon as administratively practicable following the member's termination of employment. Distribution of the amount in a member's DROP account will not be made unless the member completes a written request for distribution and a written election, on forms designated by the board, to either receive a cash lump sum or a rollover of the lump sum amount.

(4) *Proof of death and right of beneficiary or other person.* The board may require and rely upon such proof of death and such evidence of the right of any beneficiary or other person to receive the value of a deceased member's DROP account as the board may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be conclusive.

(5) *Distribution limitation.* Notwithstanding any other provision of this subsection (d), all distributions from the DROP shall conform to the "minimum distribution of benefits" provisions as provided for herein.

(6) *Direct rollover of certain distributions.* This subsection applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the system in section 54-74.

(e) *Administration of DROP.*

- (1) *Board administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the board. The members of the board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.
- (2) *Individual accounts, records and reports.* The board shall maintain, or cause to be maintained, records showing the operation and condition of the DROP, including records showing the individual balances in each member's DROP account, and the board shall keep, or cause to be kept, in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The board shall prepare or cause to be prepared and distributed to members participating in the DROP and other individuals or filed with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.
- (3) *Establishment of rules.* Subject to the limitations of the DROP, the board from time to time shall establish rules for the administration of the DROP and the

transaction of its business. The board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law. The board shall also oversee the investment of the DROP'S assets.

(4) *Limitation of liability.*

- a. The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
- b. Neither the board nor any trustee of the board shall be responsible for any reports furnished by any expert retained or employed by the board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

(f) *General provisions.*

- (1) The DROP is not a separate retirement plan. Instead, it is a program under which a member who is eligible for normal retirement under the system may elect to accrue future retirement benefits in the manner provided in this section 54-78 for the remainder of his employment, rather than in the normal manner provided under the plan. Under termination of employment, a member is entitled to a lump sum distribution of his or her DROP account balance or may elect a

rollover. The DROP account distribution is in addition to the member's monthly benefit.

(2) Notional account. The DROP account established for such a member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member until the member's termination from the DROP. The member has no control over the investment of the DROP account.

(3) No employer discretion. The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.

(4) IRC limit. The DROP account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).

(4 5) Amendment of DROP. The DROP may be amended by an ordinance of the city at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP account of any member.

(2 6) Facility of payment. If the board shall find that a member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the board may direct that any benefit due him, unless claim shall have been made for the benefit by a duly appointed legal representative, be paid to his spouse, a child, a parent or other blood relative, or to a person with whom he resides. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.

(3 7) *Information.* Each member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the board the information that it shall require to establish his rights and benefits under the DROP.

(4 8) *Prevention of escheat.* If the board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the board may, no earlier than three years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the board or the city. If such person has not made written claim therefor within three months of the date of the mailing, the board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his beneficiary later notifies the board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.

(5 9) *Written elections, notification.*

- a. Any elections, notifications or designations made by a member pursuant to the provisions of the DROP shall be made in writing and filed with the board in a time and manner determined by the board under rules uniformly applicable to all employees similarly situated. The board reserves the right to change from time to time the manner for making notifications, elections or designations by members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in

the DROP and such new administrative procedures, those new administrative procedures shall prevail.

- b. Each member or retiree who has a DROP account shall be responsible for furnishing the board with his current address and any subsequent changes in his address. Any notice required to be given to a member or retiree hereunder shall be deemed given if directed to him at the last such address given to the board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the member or retiree notifies the board of his address.

(6 10) *Benefits not guaranteed.* All benefits payable to a member from the DROP shall be paid only from the assets of the member's DROP account and neither the city nor the board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.

(7 11) *Construction.*

- a. The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- b. The titles and headings of the subsections in this section 54-78 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

(8 12) *Forfeiture of retirement benefits.* Nothing in this section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the system. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

(9 13) *Effect of DROP participation on employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same

employment standards and policies that are applicable to employees who are not DROP participants.

SECTION 12: That Chapter 54, Law Enforcement, Article II, Police Department, Division 2, Retirement System, of the Code of Ordinances of The City of Avon Park, is hereby amended by adding Section 54-80, Supplemental Benefit Component for Special Benefits; Chapter 185 Share Accounts, to read as follows:

* * * * *

Section 54-80. Supplemental benefit component for special benefits; chapter 185 share accounts.

There is hereby established an additional plan component to provide special benefits in the form of a supplemental retirement, termination, death and disability benefits to be in addition to the benefits provided for in the previous Sections of this Plan, such benefit to be funded solely and entirely by Chapter 185 premium tax monies for each plan year which are allocated to this supplemental component as provided for in Section 185.35. Amounts allocated to this supplemental component (AShare Plan@) shall be further allocated to the members and DROP participants as follows:

(a) *Individual Member Share Accounts.* The board shall create individual Amember share accounts@ for all actively employed plan members and DROP participants and maintain appropriate books and records showing the respective interest of each member or DROP participant hereunder. Each member or DROP participant shall have a member share account for his share of the Chapter 185 tax revenues described above, forfeitures and income and expense adjustments relating thereto. The board shall maintain separate member share accounts, however, the maintenance of separate accounts is for accounting purposes only and a segregation of the assets of the trust fund to each account shall not be required or permitted.

(b) *Share Account Funding.*

(1) Individual member share accounts shall be established as of September 30, 2015 for all members and DROP participants who were actively employed as of October 1, 2014. Individual member share accounts shall be credited with an allocation as provided for in the following subsection (c) of any premium tax

monies which have been allocated to the share plan for that plan year, beginning with the plan year ending September 30, 2015.

(2) In addition, any forfeitures as provided in subsection (d), shall be allocated to the individual member share accounts in accordance with the formula set forth in subsection (d).

(c) *Allocation of Monies to Share Accounts.*

(1) *Allocation of Chapter 185 Contributions.*

a. Effective as of September 30, 2015, the amount of any premium tax monies allocated to the share plan shall be allocated to individual member share accounts as provided for in this subsection. Members retiring on or after October 1, 2014 and prior to September 30, 2015 shall receive an allocation. In addition, all premium tax monies allocated to the share plan in any subsequent plan year shall also be allocated as provided for in this subsection. Available premium tax monies shall be allocated to individual Member share accounts at the end of each plan year on September 30 (a Avaluation date@).

b. On each valuation date, each current actively employed member of the plan not participating in the DROP, each DROP participant and each retiree who retires or DROP participant who has terminated DROP participation in the plan year ending on the valuation date (including each disability retiree), or beneficiary of a deceased member(not including terminated vested persons) who is otherwise eligible for an allocation as of the valuation date shall receive a share allocation as follows:

c. The total funds subject to allocation on each valuation date shall be allocated to each member share account of those eligible for an allocation in an amount equal to a fraction of the total amount, the numerator of which shall be the individual=s total years and fractional parts of years of

credited service as of the valuation date, and the denominator of which shall be the sum of the total years and fractional parts of years of credited service as of the valuation date of all individuals to whom allocations are being made. Beneficiaries shall receive an allocation based on the years of credited service of the deceased member or DROP participant.

d. Re-employed retirees shall be deemed new employees and shall receive an allocation based solely on the credited service in the reemployment period.

(2) Allocation of Investment Gains and Losses. On each valuation date, each individual member share account shall be adjusted to reflect the net earnings or losses resulting from investments during the year. The net earnings or losses allocated to the individual member share accounts shall be the same percentage which is earned or lost by the total plan investments, including realized and unrealized gains or losses, net of brokerage commissions, transaction costs and management fees.

Net earnings or losses are determined as of the last business day of the fiscal year, which is the valuation date, and are debited or credited as of such date.

For purposes of calculating net earnings or losses on a member's share account pursuant to this subsection, brokerage commissions, transaction costs, and management fees for the immediately preceding fiscal year shall be determined for each year by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these annual contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.

(3) Allocation of Costs, Fees and Expenses. On each valuation date, each individual member share account shall be adjusted to allocate its pro rata share of the costs, fees and expenses of administration of the share plan. These fees shall be

allocated to each individual member share account on a proportionate basis taking the costs, fees and expenses of administration of the share plan as a whole multiplied by a fraction, the numerator of which is the total assets in each individual member share account (after adding the annual investment gain or loss) and the denominator of which is the total assets of the fund as a whole as of the same date.

(4) *No Right to Allocation.* The fact of allocation or credit of an allocation to a member's share account by the board shall not vest in any member, any right, title, or interest in the assets of the trust or in the Chapter 185 tax revenues except at the time or times, to the extent, and subject to the terms and conditions provided in this Section.

(5) Members and DROP participants shall be provided annual statements setting forth their share account balance as of the end of the plan year.

(d) *Forfeitures.* Any member who has less than ten (10) years of service credit and who is not otherwise eligible for payment of benefits after termination of employment with the city as provided for in subsection (e) shall forfeit his individual member share account or the non-vested portion thereof. Forfeited amounts shall be redistributed to the other individual member share accounts on each valuation date in an amount determined in accordance with subsection (c)(1).

(e) *Eligibility For Benefits.* Any member (or his beneficiary) who terminates employment as a police officer with the City or who dies, upon application filed with the board, shall be entitled to be paid the value of his individual member share account, subject to the following criteria:

(1) *Retirement Benefit.*

a. A member shall be entitled to one hundred percent (100%) of the value of his share account upon normal or early retirement pursuant to Section

54-56, or if the member enters the DROP, upon termination of employment.

b. Such payment shall be made as provided in subsection (f).

(2) Termination Benefit.

a. In the event that a member's employment as a police officer is terminated by reason other than retirement, death or disability, he shall be entitled to receive the value of his share account only if he is vested in accordance with Section 54-59.

b. Such payment shall be made as provided in subsection (f).

(3) Disability Benefit.

a. In the event that a member is determined to be eligible for either an in-line of duty disability benefit pursuant to Section 54-58, subsection (a) or a not-in-line of duty disability benefit pursuant to Section 54-58, subsection (c), he shall be entitled to one hundred percent (100%) of the value of his share account.

b. Such payment shall be made as provided in subsection (f).

(4) Death Benefit.

a. In the event that a member or DROP participant dies while actively employed as a Police Officer, one hundred percent (100%) of the value of his member share account shall be paid to his designated Beneficiary as provided in Section 54-57.

b. Such payment shall be made as provided in subsection (f).

(f) Payment of Benefits. If a member or DROP participant terminates employment for any reason or dies and he or his beneficiary is otherwise entitled to receive the balance in the member's share account, the member's share account shall be valued by the plan's actuary on the next valuation date as provided for in subsection (c) above, following termination of employment. Payment of the calculated share account balance shall be payable as soon as

administratively practicable following the valuation date, but not later than one hundred fifty (150) days following the valuation date and shall be paid in one lump sum payment. No optional forms of payments shall be permitted.

(g) *Benefits Not Guaranteed.* All benefits payable under this Section 54-80 shall be paid only from the assets accounted for in individual member share accounts. Neither the City nor the board shall have any duty or liability to furnish any additional funds, securities or other assets to fund share account benefits. Neither the board nor any trustee shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the member share account balances, except due to his or its own negligence, willful misconduct or lack of good faith. All investments shall be made by the board subject to the restrictions otherwise applicable to fund investments.

(h) *Notional account.* The member share account is a notional account, used only for the purpose of calculation of the share distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the member or DROP participant until the member's or DROP participant=s termination from employment. The member or DROP participant has no control over the investment of the share account.

(i) *No employer discretion.* The share account benefit is determined pursuant to a specific formula which does not involve employer discretion.

(j) *Maximum Additions.* Notwithstanding any other provision of this Section, annual additions under this Section shall not exceed the limitations of Section 415(c) of the code pursuant to the provisions of Section 54-65, subsection (k).

(k) *IRC limit.* The share account distribution, along with other benefits payable from the system, is subject to limitation under Internal Revenue Code Section 415(b).

SECTION 13: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Avon Park.

SECTION 14: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 15: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 16: That this Ordinance shall become effective upon its adoption.

PASSED ON FIRST READING, this 11th day of January, 2016

PASSED AND ADOPTED ON SECOND READING, this day of , 2016.

MAYOR

ATTEST:

CITY MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY